

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Second Periodic Review of the Commission's)	MB Docket No. 03-15
Rules and Policies Affecting the Conversion to)	
Digital Television)	
To: The Commission		

REQUEST OF WHNT-DT FOR PRESERVATION OF MAXIMIZED SERVICE AREA

Jennifer A. Johnson
Matthew S. DelNero
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

*Counsel for New York Times
Management Services*

April 3, 2006

SUMMARY

To protect nearly 350,000 viewers from abrupt loss of DTV service at the conclusion of the transition, the New York Times Management Services urges the Commission to preserve WHNT's ability to provide maximized service on channel 19 after the DTV transition. By assuring the continuation of existing DTV service to hundreds of thousands of viewers, such action will uphold the consumer-friendly goals of the transition. It also will provide an equitable result that recognizes WHNT's substantial and early investment in the DTV transition.

Since 2001, WHNT has led the Huntsville market in the transition to digital television. Despite its out-of-core DTV allotment on channel 59, WHNT broadcasts a maximized service which delivers local and CBS-affiliated HDTV/DTV programming to over 1.3 million viewers. Unfortunately, continuation of that maximized DTV service is in jeopardy. A channel election conflict with two stations, WDBB and WYLE, has prevented WHNT from electing its in-core channel 19 using maximized facilities. Despite WHNT's good faith attempt to resolve those interference conflicts, the station has been forced to specify replication facilities in its Second Round Conflict Decision form in order to obtain a tentative designation on channel 19.

Preservation of WHNT's maximized service area is particularly appropriate given that it will not materially impact the public's access to any other station's DTV service. WDBB, which is a satellite of WTTO, would receive interference inside its DMA to only *0.07 % of its population* – and it appears that all of those persons already receive the primary signal of WTTO. Even when interference both inside and outside the DMA is taken into account, the interference amount is still only 1.3% – well below the 2% tolerance the Commission indicated would be acceptable to accommodate elections of stations with only one in-core allotment *and* the 2% *de*

minimis standard long used to accommodate stations' maximization requests. Also, WYLE will likely receive *no* interference from WHNT's maximized operation, given its continuing failure to construct a digital television facility and, in any event, the availability of other channels for any DTV operation that it may construct.

In light of the above, WHNT respectfully requests that the Commission take the following steps to preserve WHNT's maximized service area:

First, notwithstanding WHNT's Second Round Conflict Decision for a tentative designation on channel 19 with replication facilities, protect WHNT's maximized service area against other Second Round conflict decisions and channel elections made in the Third Round. Any channel election that would conflict with WHNT's maximized service on channel 19 should be expressly conditioned upon the resolution of WHNT's request for preservation of its maximized service area.

Second, in the Notice of Proposed Rulemaking proposing the Final DTV Table of Allotments, and in the Order adopting the Table, provide for WHNT's maximized service on channel 19.

Third, in the event that the Commission wishes to reduce interference from WHNT's maximized service to WYLE's possible DTV service, assign WYLE another DTV channel.

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REQUEST FOR PRESERVATION OF MAXIMIZED SERVICE AREA

New York Times Management Services ("NYTMS"), licensee of CBS-affiliated WHNT-TV, ch. 19 and WHNT-DT, ch. 59, Huntsville, AL ("WHNT") files this Request for Preservation of Maximized Service Area requesting that the FCC take steps to ensure that the Final DTV Table of Allotments preserves WHNT's ability to continue delivering DTV service to hundreds of thousands of viewers on its in-core channel 19. Although WHNT currently provides maximized service on its DTV channel 59, concurrent with this filing, it has submitted a Second Round Conflict Decision form which specifies operation at replication facilities. In specifying replication facilities, however, WHNT merely seeks to obtain a Second Round tentative channel designation on its in-core channel 19 and thereby remove continued uncertainty concerning WHNT's post-transition location. Were the Commission to provide only for WHNT's operation at replication facilities in the Final DTV Table of Allotments, it would abruptly cut off DTV service to nearly 350,000 viewers of WHNT's market-leading, CBS-affiliated DTV service at the conclusion of the transition.

Accordingly, while WHNT acknowledges that its conflicts resolution filing will result in a tentative channel designation at replication facilities on channel 19, it urges the Commission to protect its ultimate ability to provide maximized service on that channel by (1)

protecting WHNT's maximized service on channel 19 from other channel elections in the Second and Third Rounds, and (2) providing for such maximized service in the Final DTV Table of Allotments. As discussed below, such actions will preserve DTV service to hundreds of thousands of existing viewers without materially affecting the public's access to any other station's DTV service.

I. WHNT HAS LED ITS MARKET IN THE DTV TRANSITION AND HAS SOUGHT DILIGENTLY TO MAINTAIN ITS EXISTING DTV SERVICE THROUGHOUT THE CHANNEL ELECTION PROCESS.

Despite its out-of-core allotment, WHNT has led the Huntsville Designated Market Area ("DMA") in the DTV transition. WHNT was the first station to construct and begin operations of a DTV service. That service has operated without interruption since 2001 – well before WHNT's DTV construction deadline. Last year, WHNT increased power to provide full, maximized service to the viewing public, even though considerably lesser service would have complied with the Commission's "use-it-or-lose-it" interference protection deadline for out-of-core stations. Unfortunately, continuation of that maximized DTV service is in jeopardy, as WHNT has been forced to specify replication facilities in its Second Round Conflict Decision form in order to obtain a tentative designation on its in-core channel.

A. WHNT Has Relied Upon the Strong Presumption that a Station with Only One In-Core Channel Will Be Allowed to Return to that Channel at the Conclusion of the Transition.

In providing maximized DTV service on an out-of-core channel, WHNT acted in reliance on two oft-repeated presumptions that have guided the Commission throughout the DTV transition and channel election process: (1) that stations with out-of-core digital allotments will operate on their in-core analog channels after the transition, and (2) that the Commission will protect existing DTV service. In 2001, for instance, the Commission stated, "We presume that,

except in extraordinary circumstances, stations that have one in-core and one out-of-core channel will remain on their in-core channel after the transition.”¹ Consistent with this longstanding principle, the Commission made clear in its *Second DTV Biennial Review* that stations with only one in-core channel, such as WHNT, will be “afforded a high priority in permitting their conversion to a DTV channel.”² The Commission explained that although it would generally prohibit, absent consent, channel elections for which more than 0.1% interference is predicted to another station’s elected channel, it would permit that limit to be exceeded for stations attempting to elect their only in-core channel.³ It also noted that it would “seek to recognize industry expectations by protecting existing service and respecting investments already made.”⁴

Together, these presumptions justified WHNT’s investment in maximized service on its out-of-core DTV channel. Although it knew that the costs of maximizing on its out-of-core channel would be over and above the unavoidable costs that will be incurred in the eventual relocation to its in-core channel, WHNT decided to undertake immediate maximization to promote a successful DTV transition in Huntsville. Provided that it could continue to serve

¹ *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order and Further Notice of Proposed Rule Making, 16 FCC Rcd 5946, 5953 ¶ 16 (2001).

² *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd 18279, 18300 ¶ 50 (2004) (“*Second DTV Biennial Review R&O*”).

³ *Id.* at 18302 ¶ 56 (“With regard to stations with an allotted out-of-core DTV channel election to operate a DTV station on their in-core NTSC channel, we will permit the 0.1 percent additional interference limit to be exceeded on a limited basis in order to afford these stations an improved opportunity to select their NTSC channel. Such allowance is justified because these single channel licensees have only one in-core channel to select and may need this additional accommodation.”); *See also id.* at 18301 ¶ 54 n.106 (“We note that the nature of the interference conflict differs with respect to an elected NTSC channel of a one-in-core station, which enjoys a special status, as opposed to an elected NTSC channel of a two-in-core station, which has the option to change its election to its currently assigned DTV channel.”).

⁴ *Id.* at 18291 ¶ 31.

viewers in the maximized area after the transition is complete, WHNT believed this investment in bringing early DTV service to viewers to be worthwhile.

Also in accordance with the Commission's policy pronouncements concerning stations with only one in-core channel, WHNT made preparations to return to its in-core analog channel 19 for post-transition operations. For example, WHNT made substantial investments in its channel 19 antenna and transmitter system in order to accommodate the relocation of DTV facilities to that channel. It also has certified to the Commission that it would operate maximized facilities on its post-transition channel, and twice filed for election of channel 19 in the channel election process.

B. WHNT Has Attempted in Good Faith to Resolve the Interference Conflict with WDBB and WYLE, to No Avail.

In response to WHNT's First Round channel election, the Media Bureau sent WHNT a letter identifying four stations that would receive interference in excess of 0.1% from WHNT's post-transition DTV operations on channel 19. Excluding two stations with which the interference conflict was quickly resolved,⁵ the Bureau reported the following as "interference conflicts": 1.3% to elected DTV ch. 18 of WDBB (satellite of WTTO, Homewood, AL), Bessemer, AL and 6.1% to elected DTV ch. 20 of WYLE, Florence, AL.

In response to the Bureau's letter, WHNT diligently sought to resolve the interference conflicts with the remaining two stations. WHNT explored three options: reductions of its parameters, use of another in-core channel for its post-transition operation, and negotiated arrangements with WDBB and WYLE. First, WHNT determined that to reduce parameters to

⁵ WCLP decided to revert its election to its DTV channel 33, so interference to that station was no longer of concern. Also, WGCL consented to the 0.3% predicted interference to its station. This interference consent, previously submitted to the Commission, is attached hereto for ease of reference.

replication facilities (at which point the policy announced by the Media Bureau's Public Notice of August 2005 would allow election of channel 19 because interference would be below 2%) would deprive 342,278 *existing* DTV viewers of the DTV service now provided by WHNT.⁶ Second, WHNT commissioned a study of other available channels, which concluded that operation on any potentially "vacant" channel would result in substantial interference conflicts with other stations and/or would not allow WHNT to maintain a reasonable level of DTV service to the Huntsville market. Third, despite its good faith attempts to negotiate an interference agreement or other technical resolution with both WDBB and WYLE, no agreement could be reached. Indeed, as explained more fully in WHNT's August 2005 filing, WDBB refused to negotiate under any circumstances and WYLE made clear that despite its continued failure to build a DTV facility, it would consent only if provided monetary consideration in the "six figure" range.⁷

Unable to resolve the interference conflicts to WDBB and WYLE, WHNT asked the Commission to grant it a tentative designation for its maximized facilities on channel 19 at the end of the First Round, in accordance with the above-described policies concerning preservation of existing service and relocation of stations with an out-of-core DTV channel to their in-core channel. It filed significant technical, policy, and legal justification in support of this request.⁸ WHNT explained that grant of this request would preserve service to nearly 350,000 viewers who would otherwise lose access to WHNT's DTV service on the transition

⁶ See *DTV Channel Election: First Round Conflict Decision Extension and Guidelines for Interference Conflict Analysis*, Public Notice, DA 05-2233, at 3 (rel. Aug. 2, 2005) ("Conflict Analysis Notice").

⁷ See Supplemental Showing in Support of First Round Election of WHNT-TV, MB Docket No. 03-15, at 9-11 (filed Aug. 15, 2005) ("WHNT Supplemental Showing").

⁸ *Id.*

date, while avoiding any material impact to WDBB, which, as discussed more fully below, would receive only 0.07% interference in its DMA, and WYLE, which has yet to construct DTV facilities or specify a date on which its facilities may be constructed, and in any event which may easily build out its certified facilities using a different channel. A subsequent meeting with key Commission staff, however, made clear that no matter how substantial the equities of WHNT's case, WHNT's request that its maximized election be allowed could not be considered at that point in the channel election process and potentially not until issuance of the NPRM concerning the Final DTV Table of Allotments. Thus, at the end of the First Round, the Commission did not provide WHNT a tentative channel designation.

C. To Avoid Continued Uncertainty Regarding its Tentative Channel Designation, WHNT Has Been Forced to Specify Replication Facilities in its Second Round Conflict Decision Form.

Although it remains WHNT's ultimate goal to provide maximized DTV service in the post-transition environment, continued uncertainty as to its tentative channel designation is problematic. If WHNT were to emerge from the Second Round without a tentative designation, it risks the possibility of having to operate on a channel other than channel 19.

As noted above and in the attached engineering analysis, such operation would surely require a reduction in parameters that may serve even fewer viewers than would operation of *replication* facilities on channel 19. Moreover, WHNT would face the considerable difficulties, as well as expense, in connection with obtaining and installing an antenna for the new channel. To install that antenna, WHNT would have to displace, for at least two weeks, a medical office complex and a family occupying a nearby home. Obtaining these parties' consent to install WHNT's initial transmitter on channel 59 involved substantial expense above and beyond the normal costs of construction and caused extreme inconvenience to the affected family, medical practitioners and their patients. The difficulties associated with this move

motivated WHNT to assure that its facilities were upgraded to assure a quick transition from analog to digital operation on channel 19. Assuming that the affected parties would be willing to consent to another displacement and the accompanying inconvenience, WHNT expects that the process would again involve substantial costs. These costs would be over and above the hundreds of thousands of dollars which WHNT has already budgeted simply to move off of channel 59.

Accordingly, to secure a tentative channel designation on its in-core channel 19, WHNT has specified replication facilities in its Second Round Conflict Decision form. Because such operation is predicted to cause only 0.89% interference to WDBB and 1.58% interference to WYLE, WHNT's filing allows it to obtain a tentative channel designation on channel 19 at the end of the Second Round pursuant to the Media Bureau's announced policies.⁹ The viewing public in Huntsville would be ill served, however, were the Commission to fail to preserve *maximized* service for WHNT in the Final DTV Table of Allotments.

II. THE COMMISSION SHOULD PRESERVE WHNT'S MAXIMIZED SERVICE AREA.

As demonstrated by the attached technical study, if WHNT is not allowed to operate maximized DTV facilities on channel 19, 342,278 *existing* DTV viewers will be deprived of the DTV service now provided by WHNT. On the day the transition is completed, each of those 342,278 viewers would lose access to free, over-the-air CBS and local DTV/HDTV programming – including some 32 hours per week of local news – that will have been available without interruption for years. This abrupt loss of service would run counter to an underlying

⁹ See Conflict Analysis Notice at 2-3.

principle of the transition: “that a significant number of consumers not lose access to television service during the transition from analog to digital.”¹⁰ Generally, this principle has referred to preventing disruption of analog service; no one has previously contemplated the cessation of *digital* service when the transition ends. Yet that is exactly what would happen to viewers within WHNT’s maximized area were the Commission to provide for only WHNT’s replication coverage in the Final DTV Table of Allotments.

In addition to preventing loss of service to viewers, preservation of WHNT’s maximized coverage area would be consistent with Congress’ and the Commission’s recognition of the value of maximization. For example, in the Community Broadcaster Protection Act of 1999 (“CBPA”), Congress directed that establishment of the Class A service must not prevent “maximization of a full-power digital television applicant’s service area.”¹¹ As the Commission later noted, “In enacting the [CBPA], Congress recognized the importance of preserving the right of DTV stations to maximize.”¹² And it was specifically to enable maximization that the Commission established the 2 percent *de minimis* interference standard for proposed changes in DTV operation.¹³

¹⁰ *Second Periodic Review*, Notice of Proposed Rulemaking, 18 FCC Rcd 1279, 1331 (2003). See also 150 Cong. Rec. H8874-02 (Oct. 8, 2004) (statement of Rep. Dingell) (cautioning against action which could “result in many consumers losing their television service”).

¹¹ See Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), codified at 47 U.S.C. § 336(f)(D).

¹² *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 20594, 20605 ¶ 27 (2001).

¹³ *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 ¶ 79 (1998) (establishing the *de minimis* standard and noting that it “will provide additional opportunities for stations to maximize their DTV coverage and service through increasing their power and/or making other changes in their facilities.”).

Equitable considerations also favor preservation of WHNT's maximized service area. The Commission has indicated that in resolving interference conflicts, it will be favorably disposed towards stations which have been "early adopter[s]" of DTV technology.¹⁴ In the *Second DTV Biennial Review*, the Commission explained that particularly towards the end of the channel election process, it would look to "the length of time the station has been operating on DTV" as well as "the impact on the public's access to DTV services."¹⁵ Under this standard, WHNT clearly merits preservation of its maximized service area. Since 2001, it has operated a DTV service that has far exceeded the minimum requirements for DTV construction and buildout set by the Commission.

III. PRESERVATION OF MAXIMIZED COVERAGE TO WHNT'S VIEWERS WILL NOT MATERIALLY IMPACT THE PUBLIC'S ACCESS TO ANY OTHER DTV SERVICE.

Preservation of WHNT's maximized service is particularly appropriate given that it will not materially impact the public's access to any other station's DTV service. Specifically:

WDBB (Satellite of WB Affiliate WTTO)¹⁶: The Commission's Public Notice of August 2005 indicates that "whether [the interference] is outside the affected station's DMA" is an important factor in considering grant of a station's election notwithstanding interference in

¹⁴ *Second DTV Biennial Review R&O*, 18 FCC Rcd at 18307 ¶ 64.

¹⁵ *Id.*

¹⁶ According to the website of the licensee of WTTO, Sinclair Broadcast Group, WDBB-DT is not on the air. See <http://www.sbg.net/business/markets/all.shtml#birmingham> (indicating that channels listed in bold, red font are not on the air and listing WDBB-DT as such). The FCC's CDBS, however, indicates that WDBB holds an STA specifying operation at 11.1 kw ERP. WHNT assumes for purposes of this filing that WDBB is on the air and operating DTV facilities pursuant to the STA.

excess of 0.1%.¹⁷ As documented in the attached engineering statement of du Treil, Lundin, and Rackley, the vast majority of interference to WDBB occurs *outside* that station's DMA (Birmingham). Specifically, WDBB, a satellite of WTTO(TV), would receive interference from WHNT inside the Birmingham market to only 0.07% of its population, representing 1,070 persons – and all of those persons already receive the primary signal of WTTO.¹⁸

Furthermore, the 0.07% figure is below the 0.1% interference tolerance generally used in the channel election process. Even when interference both inside and outside the DMA is taken into account, it is well below both the 2% tolerance the Commission indicated would be acceptable to accommodate the elections of stations with only one in-core allotment *and* the 2% de minimis standard used to permit maximization throughout the DTV transition. By contrast, adjusting WHNT's technical parameters to reduce predicted interference to WDBB would cause hundreds of thousands of viewers to lose the DTV service that WHNT now provides – including WHNT's 32 hours of weekly news coverage. The continuation of WHNT's existing, maximized DTV service should not be sacrificed in light of such minimal interference.

WYLE (Ind.): As noted above, the Commission has announced that election of a station's only in-core channel will be "afforded a high priority." The only concern the Commission expressed with respect to this priority was the avoidance of substantial interference to existing DTV service.¹⁹ Allowing WHNT's election to proceed would not interfere *at all* with any existing DTV service of WYLE.

¹⁷ See Conflict Analysis Notice at 3.

¹⁸ See Engineering Analysis, *supra*, at 2.

¹⁹ *Second DTV Biennial Review R&O*, 19 FCC Rcd at 18300-18303 ¶¶ 50, 56 (emphasis added).

This is because WYLE has yet to construct a digital television facility. And recent statements in its fifth DTV construction extension request, currently pending before the Commission, suggest that its construction of digital facilities may not occur, if ever, until well after the end of the DTV transition in February 2009. WYLE has long suffered financial difficulty, and it has publicly stated that its “revenue stream barely supports the analog operation,” much less a digital facility.²⁰ Indeed, its most recent request for extension of the DTV construction deadline, filed in July 2005, details a long list of obstacles to the launch of WYLE’s DTV service, including the inability to obtain the six-figure financing necessary to purchase a digital transmitter.²¹ WYLE’s extension request also notes that it has lost access to primetime programming (for its analog station), most of its advertising revenues, and nearly every employee; all of these factors cast doubt on its DTV buildout.²² Since the filing of that extension request, WYLE has not provided *any* update to the Commission concerning whether or when it will build its DTV facilities.²³

While WHNT sympathizes with WYLE’s financial situation, protection of a currently nonexistent DTV service that may never get on the air should not block preservation of

²⁰ See Doug Halonen, *A Why 2002? Problem: Small Stations Fear Missing Digital Deadline*, Electronic Media (March 8, 1999).

²¹ See WYLE-DT, FCC Form 337, BEPCDT-20050714ACE (filed July 13, 2005). WYLE’s extension request indicates that a loan of \$110,000 to the station was rejected because of two “previously unknown liens” on the property to be used as collateral. Although WYLE asserts that it is working diligently to have those liens removed, it is unclear from WYLE’s filing whether the lender will still be willing to provide financing to WYLE even if the liens are cleared. The extension request also does not provide enough information to know whether that loan would cover the remaining DTV construction costs.

²² The extension request does not provide any estimate as to when DTV facilities may be built.

²³ Subsequent to its extension request, the only information on file from WYLE is a request to transfer control of the station from the deceased prior owner, Mr. Les White, to Mr. White’s Estate. See BTCCT-20060113ABL.

WHNT's existing DTV service, which includes CBS HDTV network programming and more than 32 hours of local news per week, to hundreds of thousands of viewers in the post-transition environment.²⁴ WYLE should not be allowed to warehouse spectrum at the expense of a DTV service that is already being provided to viewers.

Given that no other channel is available that would preserve WHNT's existing service, and because WYLE has not yet constructed DTV facilities, it would be more appropriate and efficient to assign another DTV channel for WYLE. As documented in the attached engineering analysis, *at least* three channels are available for WYLE's operation: channel 7, channel 29, and channel 46. In light of WYLE's financial difficulties, channel 7 should be particularly attractive to it, as the station could provide replication coverage utilizing considerably less power than would be required on its presently allotted channel 20.²⁵

WHNT has presented this information concerning available channels to WYLE and has even offered to consider a financial arrangement with WYLE based on the costs of "relocating" to a different DTV channel, such as the reasonable costs of equipment – if any – that has been purchased for WYLE's channel 20 facilities, to the extent such equipment could not be used for alternate channel operations. Unfortunately, WYLE has refused to even contemplate operation on another channel in its market and, absent receipt of a "six figure" sum, has insisted upon warehousing its allotted, but still vacant, DTV channel 20.²⁶

²⁴ It should be noted that the interference to WYLE is at the edge of its grade B service area. Therefore, if WYLE's financial problems lead it to construct reduced facilities, this also might reduce or eliminate interference from WHNT's operations on channel 19.

²⁵ On Channel 7, WYLE would need only to operate at 15.1 kW ERP to achieve replication coverage, whereas on its allotted channel 20 it would need to operate at 50 kW ERP.

²⁶ At one point, through counsel WYLE proposed that it might consent to WHNT's maximized operation were WHNT to pay for construction of WYLE's channel 20 operation at a new site (continued...)

IV. TO PREVENT HARM TO THE VIEWING PUBLIC, THE COMMISSION SHOULD PRESERVE WHNT'S MAXIMIZED SERVICE ON CHANNEL 19.

To prevent abrupt loss of DTV service for nearly 350,000 viewers, promote spectral efficiency, and out of recognition of WHNT's considerable promotion of the DTV transition, WHNT respectfully requests that the Commission take the following steps to preserve WHNT's maximized service area:

First, notwithstanding WHNT's Second Round Conflict Decision for a tentative designation on channel 19 with replication facilities, protect WHNT's maximized service area against other Second Round conflict decisions and channel elections made in the Third Round. Any channel election that would conflict with WHNT's maximized service on channel 19 should be expressly conditioned upon the resolution of WHNT's request for preservation of its maximized service area.²⁷

five miles from the site specified in WYLE's DTV construction permit. However, WYLE's offer would have required WHNT to purchase and install a new transmitter and digital encoder, among other costs. WHNT does not believe such costs to be related to relocation of WYLE to a new tower site. Rather, it appears WYLE is attempting to use the channel election process to have WHNT fund its long-delayed DTV construction.

²⁷ A similar approach was taken by the Commission in the Second Round with respect to WABC-TV's request for a waiver of the 0.1% interference standard so that it could elect its analog channel 7 even though WABC had specified reversion to its DTV channel 45 in its First Round Conflict Decision form. Although the Commission has not yet ruled on the waiver request, it gave public notice that any subsequent election of channel 7 or 45 would be contingent on resolution of WABC's waiver request. *See Tentative Digital Channel Designations for Stations Participating in the First Round of DTV Channel Elections and Second Round Election Filing Deadline*, Public Notice, DA 05-2649, at 3 (rel. Oct. 4, 2005). Note that unlike WABC, WHNT does not make assignment of a tentative designation pursuant to its Second Round Conflict Decision form contingent upon resolution of the instant request for preservation of maximized service area, which is presented for separate consideration. On the contrary and as noted above, to avoid continued uncertainty as to its final channel, it is essential for WHNT to ensure its post-transition operations on channel 19. Accordingly, WHNT's FCC Form 385 contemplates assignment of a tentative designation on channel 19 at the end of the Second Round.

Second, in the Notice of Proposed Rulemaking proposing the Final DTV Table of Allotments, and in the Order adopting the Table, provide for WHNT's maximized service on channel 19.

Third, in the event that the Commission wishes to reduce interference from WHNT's maximized service to WYLE's possible DTV service, assign WYLE another DTV channel (such as channel 7).²⁸

²⁸ The Commission could accomplish this by, for example, conditioning any extension of WYLE's DTV construction permit on WYLE's constructing DTV facilities on a different DTV channel. If WYLE does not wish to relinquish the possibility of eventually constructing facilities on channel 20, the Commission could condition extension of its DTV construction permit on WYLE's consent to interference from WHNT's maximized operation on channel 19.

CONCLUSION

At the end of the DTV transition in less than three years, over 1.3 million viewers in the Huntsville market will have enjoyed free, over-the-air access to WHNT's CBS and local DTV and HDTV programming for half a decade. To ensure that nearly 350,000 of these viewers do not suddenly lose this market-leading DTV service, the Commission should preserve WHNT's maximized service area on channel 19. In contrast to the many public interest benefits of WHNT's maximized operation on channel 19, preservation of that service will not materially harm the public's access to any other existing DTV service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jennifer A. Johnson", written over a horizontal line.

Jennifer A. Johnson
Matthew S. DelNero
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

*Counsel for New York Times Management
Services*

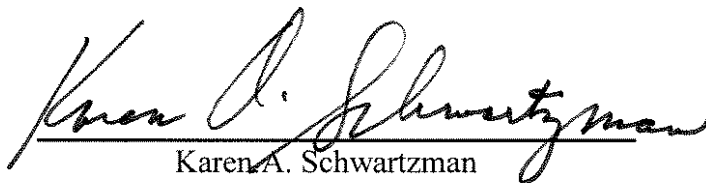
April 3, 2006

CERTIFICATE OF SERVICE

I, Karen A. Schwartzman, a secretary at the law firm of Covington & Burling, do hereby certify that on this 3rd day of April, 2006, I caused a copy of the foregoing "Request for Preservation of Maximized Service Area" to be sent via first-class U.S. Mail, postage prepaid, to the following:

Francisco R. Montero, Esq.
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street
Eleventh Floor
Arlington, VA 22209
Counsel to WDBB-TV, Inc., licensee of WDBB(TV)

Kevin M. Walsh, Esq.
IRWIN, CAMPBELL & TANNENWALD, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, DC 20036-3101
Counsel to ETC Communications, Inc., licensee of WYLE(TV)


Karen A. Schwartzman

ATTACHMENT A

TECHNICAL STATEMENT
IN SUPPORT OF WHNT
REQUEST FOR PRESERVATION OF
MAXIMIZED SERVICE AREA

This Technical Statement supports the Request for Preservation of the Maximized Service Area of WHNT assigned to Huntsville, Alabama. WHNT operates on NTSC Channel 19 and DTV out-of-core on Channel 59. WHNT elected its NTSC Channel 19 for final maximized DTV operation, but the Bureau has sent WHNT a conflict letter stating that such election would cause interference to three stations in excess of the general 0.1% limit of new interference, using WHNT's maximum facilities as authorized by FCC File Number: BMPCDT-20041105AGI.

Concurrent with this filing, WHNT has filed its Second Round Conflict Decision form, in which it has specified operation at replication facilities (rather than maximization facilities in order to obtain a tentative designation on Channel 19). Notwithstanding that filing, WHNT has asked the Commission to preserve its maximized service area in the Final DTV Table of Allotments.

Tabulated below are the interference statistics, as calculated by the FCC, for the three affected stations where greater than 0.1% interference is created by WHNT-DT on Channel 19:

Subject Station	Interference Caused
WHNT Huntsville, AL	6.1% to WYLE Florence, AL
NTSC - 19	1.3% to WDBB Bessemer, AL
DTV - 59	0.3% to WGCL Atlanta, GA
Elected to 19	

Table 1. Interference Caused on WHNT's Elected Channel,
Assuming Maximized Facilities

Note, for station WGCL at Atlanta, an interference agreement between WHNT and WGCL has been obtained. Therefore, no additional consideration for WGCL is herein provided.

It is noted that WHNT certified to operate its DTV Channel 59 maximized operation (BMPCDT-20041105AGI) on Channel 19 with a resulting non-directional effective radiated power of 458.31 kW and an antenna height above average terrain of 514 meters (herein "maximized").

Impact to WDBB - Channel 18 - Bessemer, Alabama

Tabulated below is the interference caused population information for WDBB, considering the interference both within and outside of WDBB's "home" DMA of Birmingham, Alabama:

DTV Facility	Interference
Outside Birmingham DMA	1.22% (18,911 persons)
Inside Birmingham DMA	0.07% (1,070 persons)

Table 2. Interference Caused to WDBB (BPCDT-19991101AEA) from WHNT at Maximized Facility

Figure 1 is an associated map showing the predicted interference caused to the WDBB-DT construction permit (BPCDT-19991101AEA) from the maximized WHNT Channel 19 facility. Also shown are the DMA boundaries. No interference to the current WDBB-DT STA facility is predicted (BMDSTA-20050415AEB) from the maximized WHNT Channel 19 facility. As noted in Table 2, only 0.07% of the interference to WDBB is within WDBB's DMA. Also, it is our understanding that WDBB is a satellite of WTTT. We have determined that all of the interference points within WDBB's DMA are contained within the WTTT DTV Noise-Limited coverage contour (using WTTT's construction permit facility).

Impact to WYLE - Channel 20 - Florence, Alabama

Figure 2 is a map showing the predicted interference caused to the WYLE-DT construction permit (BPCDT-19991101ALK) from the maximized WHNT Channel 19 facility.

It is determined that WYLE's digital operation could instead operate on Channel 46 and be in compliance with the Commission's allocation criteria. This Channel 46 facility for WYLE would be the same as that authorized by FCC File Number BPCDT-19991101ALK, considering the dipole antenna adjustment. On Channel 46, WYLE would cease to be an allocation issue for WHNT on Channel 19. WYLE on Channel 46 would provide service to 362,173 persons, interference-free. WYLE on Channel 20 would provide service to 361,004 persons, interference-free.

Another option for WYLE appears to be Channel 7, with an effective radiated power of 15.1 kilowatts. Due to the enhanced propagation characteristics within the high-VHF band, a lower effective radiated power of 15.1 kilowatts is all that is necessary to replicate the WHNT authorized service area of 48.9 kilowatts on Channel 20.

Even other channels are available for WYLE as tabulated below:

Possible WYLE DTV Channel	Replicated Facilities (Non-Directional)	Interference Caused	Total Interference Received (Post-Transition)
7	15.1 kW	None	4.6%
20	50.0 kW	Elected Channel	6.2%
21	51.2 kW	WUXP Nashville, TN 0.1% (2,044 persons)	6.8%
26	57.4 kW	WTJP Gadsden, AL 0.2% (2,896 persons)	6.9%
27	58.4 kW	WKRN Nashville, TN 0.9% (18,803 persons)	8.3%

Possible WYLE DTV Channel	Replicated Facilities (Non-Directional)	Interference Caused	Total Interference Received (Post-Transition)
28	60.1 kW	WREG Memphis, TN 1.1% (16,185 persons) WTTO Homewood, AL 1.0% (16,523 persons)	12.8%
29	60.5 kW	WKNO Memphis, TN 0.9% (14,172 persons)	0.4%
46	86.9 kW	None	0.1%

Alternative for WHNT DTV Operation

An "alternate" WHNT facility was also analyzed. This WHNT facility would just replicate its existing NTSC facility on Channel 19, which would be a non-directional effective radiated power of 40.7 kilowatts with an antenna height above average terrain of 531 meters. This is the facilities described in WHNT's Second Round Conflict Decision form. However, as tabulated below, using the OET-69 procedure, this replicated facility would serve a population that is 342,278 persons lower, or 25 percent less, compared to its associated DTV maximized facility.

DTV Facility	Total Population
DTV Maximized Facilities DTV-19 458.31 kW 514 m HAAT	1,349,610 persons
DTV Replicated Facilities DTV-19 40.7 kW 531 m HAAT	1,007,332 persons
Population Lost	342,278 persons

Table 3. Population Served by WHNT for Maximized & Replicated Facilities on Channel 19.

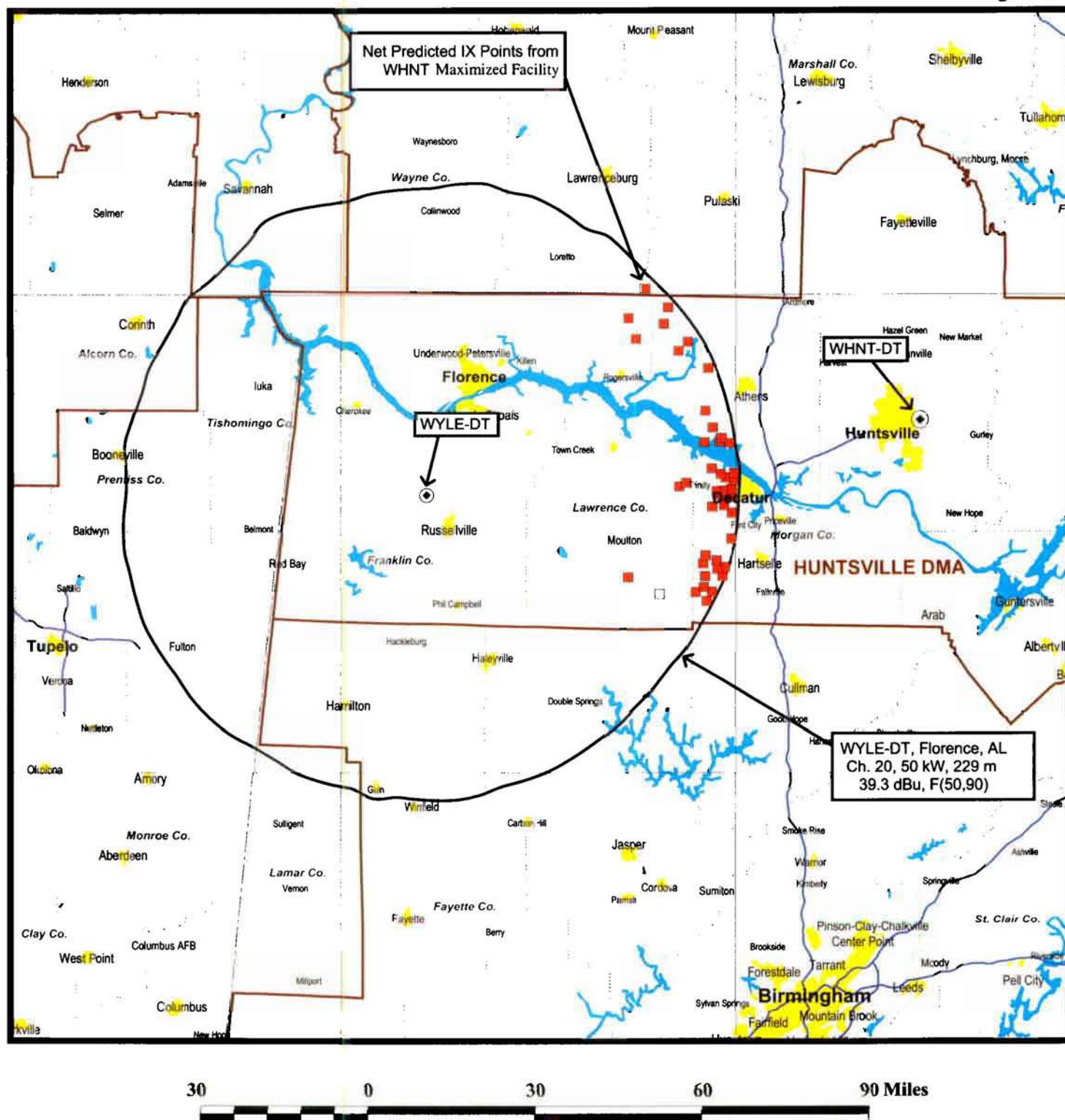
An allocation study was also completed for WHNT to determine if a high-band VHF or another UHF channel is available. However, no other channel was found for a maximized WHNT facility that satisfied the Commission's 0.1% limit on new interference. Figure 3 is a tabulation of the primary allocation preclusion for each of the studied alternate channels for WHNT. Therefore, any other WHNT DTV facility that would satisfy the Commission's allocation criteria would be smaller and serve significantly less population than its DTV maximized facility.

Charles Cooper

du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237
941.329.6000

April 3, 2006

Figure 1

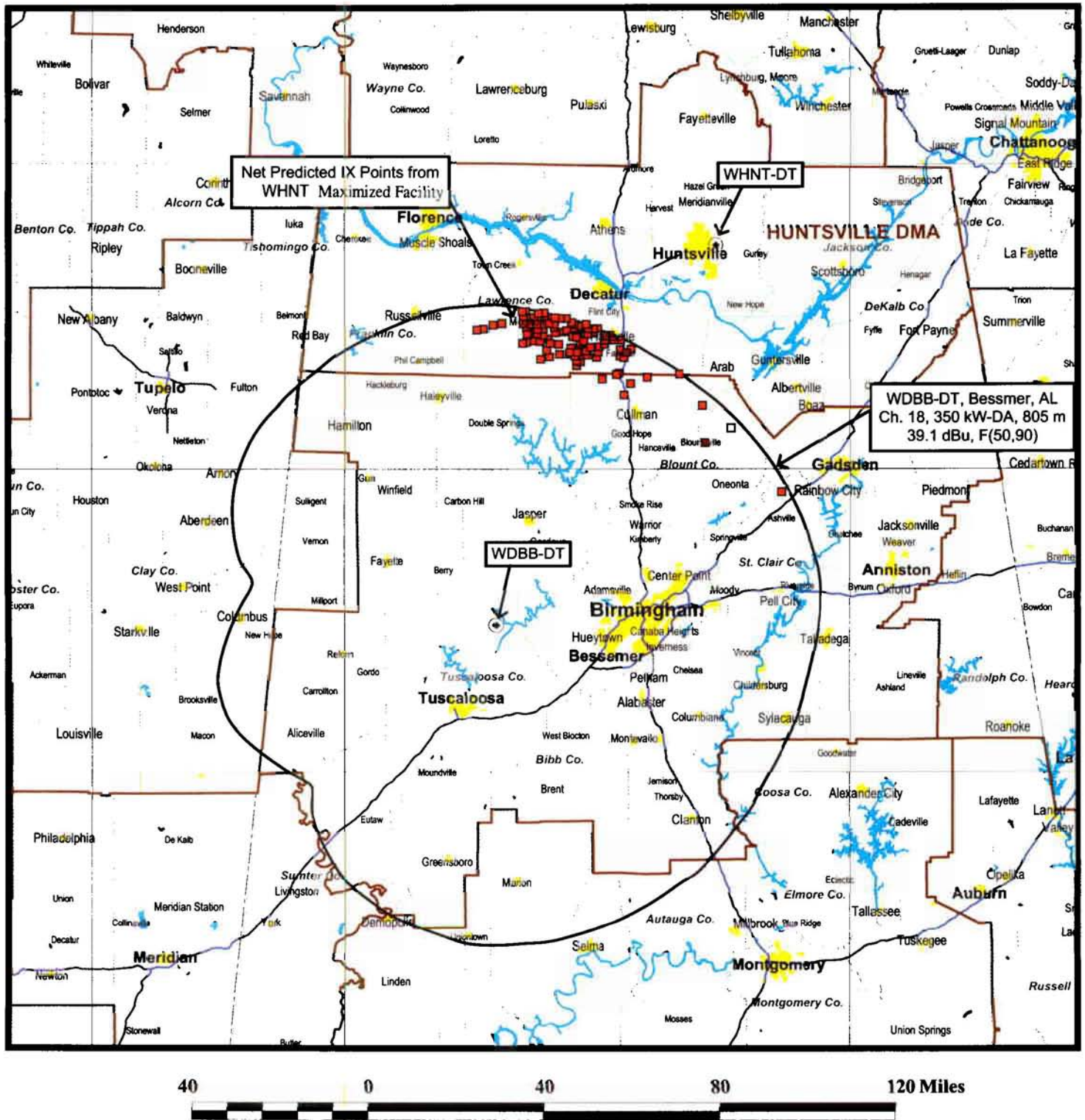


PREDICTED INTERFERENCE TO WYLE-DT FROM WHNT-DT ELECTED FACILITY

Prepared for:
WHNT-DT
HUNTSVILLE, ALABAMA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2



PREDICTED INTERFERENCE TO WDBB-DT FROM WHNT-DT ELECTED FACILITY

Prepared for:
WHNT-DT
HUNTSVILLE, ALABAMA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

SUMMARY OF ALTERNATE DTV CHANNEL SEARCH
FOR WHNT-TV, HUNTSVILLE, AL

Channel Studied	Station(s) Potentially Impacting Channel	Dist. (km) ¹	Notes
VHF Channels			
7	WCIQ (NTSC), Ch. 7, Mount Cheaha, AL	154	WCIQ DTV Elected Channel 7/FCC Tentative Approval Received
8	WNPT (NTSC), Ch. 8, Nashville, TN	148	WNPT DTV Elected Channel 8/FCC Tentative Approval Received
9	WTVC (NTSC), Ch. 9, Chattanooga, TN	120	WTVC DTV Elected Channel 9/FCC Tentative Approval Received
10	WSMV (DTV), Ch. 10, Nashville, TN	159	WSMV DTV Elected Channel 10/FCC Tentative Approval Received
11-12	WDEF (NTSC), Ch. 12, Chattanooga, TN	119	WDEF DTV Elected Channel 12/FCC Tentative Approval Received
13	WRCB (DTV), Ch. 13, Chattanooga, TN	121	WRCB DTV Elected Channel 13/FCC Tentative Approval Received
Core UHF Channels			
14-15	WHDF (NTSC), Ch. 15, Florence, AL	62	WHDF DTV Elected Channel 15/FCC Tentative Approval Denied
16	WELF-TV (DTV), Ch. 16, Dalton, GA	108	WELF DTV Elected Channel 16/FCC Tentative Approval Received
17	WDBB (DTV), Ch. 18, Bessemer, AL	161	WDBB DTV Elected Channel 17/FCC Tentative Approval Received
18	WDBB (DTV), Ch. 18, Bessemer, AL	161	WDBB DTV Elected Channel 17/FCC Tentative Approval Received
19	<i>WHNT Currently Elected DTV Channel</i>		
20	WYLE (DTV), Ch. 20, Florence, AL	111	WYLE DTV Elected Channel 20/ FCC Tentative Approval Received
21	WUXP (DTV), Ch. 21, Nashville, TN	171	WUXP DTV Elected Channel 21/ FCC Tentative Approval Received
22	WFIQ (DTV), Ch. 22, Florence, AL	116	WFIQ DTV Elected Channel 22/FCC Tentative Approval Received
23	WNAB (DTV), Ch. 23, Nashville, TN	171	WNAB DTV Elected Channel 28/FCC Tentative Approval Received
24	WHIQ (DTV), Ch. 24, Huntsville, AL	0	WHIQ DTV Elected Channel 24/FCC Tentative Approval Received
25	WATL (DTV), Ch. 25, Atlanta, GA	226	WATL DTV Elected Channel 25/FCC Tentative Approval Received
26	WTJP (DTV), Ch. 26, Gadsden, AL	103	WTJP DTV Elected Channel 26/FCC Tentative Approval Received
27	WKRN (DTV), Ch. 27, Nashville, TN	148	WKRN DTV Elected Channel 27/FCC Tentative Approval Received
28	WTTQ (DTV), Ch. 28, Homewood, AL	141	WTTQ DTV Elected Channel 28/FCC Tentative Approval Received
29	WTCI (DTV), Ch. 29, Chattanooga, TN	126	WTCI DTV Elected Channel 29/FCC Tentative Approval Received
30	WIAT (DTV), Ch. 30, Birmingham, AL	141	WIAT DTV Elected Channel 30/FCC Tentative Approval Received
31	WIAT (DTV), Ch. 30, Birmingham, AL	141	WIAT DTV Elected Channel 30/FCC Tentative Approval Received
32	WAAY (NTSC), Ch. 31, Huntsville, AL	0	WAAY DTV Elected Channel 31/FCC Tentative Approval Denied
33	WCFT-TV (NTSC), Ch. 33, Tuscaloosa, AL	162	WCFT-TV DTV Elected Channel 33/FCC Tentative Approval Denied
34	WTNZ (DTV), Ch. 34, Knoxville, TN	274	WTNZ DTV Elected Channel 34/FCC Tentative Approval Received
35	WCBI (DTV), Ch. 35, Columbus, MS	242	WCBI DTV Elected Channel 35/FCC Tentative Approval Received
36	WABM (NTSC), Ch. 36, Birmingham, AL	141	WABM DTV Elected Channel 36/ FCC Tentative Approval Received
37	Reserved for Radio Astronomy	--	

Figure 3
Sheet 2 of 2

38	WEMT (DTV), Ch. 38, Greeneville, TN	374	WEMT DTV Elected Channel 38/ FCC Tentative Approval Received
39	WYHB-CA, Ch. 39, Chattanooga, TN WHTN (DTV), Ch. 39, Murfreesboro, TN	126 149	WHTN DTV Elected Channel 39/ FCC Tentative Approval Denied
40	WDSI (DTV), Ch. 40, Chattanooga, TN	126	WDSI DTV Elected Channel 40/ FCC Tentative Approval Received
41	WZDX (DTV), Ch. 41, Huntsville, AL	0	WZDX DTV Elected Channel 41/ FCC Tentative Approval Received
42	WFLI (DTV), Ch. 42, Cleveland, TN	126	WFLI DTV Elected Channel 42/ FCC Tentative Approval Received
43	WBBJ (DTV), Ch. 43, Jackson, TN	221	WBBJ DTV Elected Channel 43/ FCC Tentative Approval Received
44	WJFB (DTV), Ch. 44, Lebanon, TN	158	WJFB DTV Elected Channel 44/ FCC Tentative Approval Received
45-46	WPXH (DTV), Ch. 45, Gadsden, AL	94	WPXH DTV Elected Channel 45/ FCC Tentative Approval Received
47	WLJT (DTV), Ch. 47, Lexington, TN	216	WLJT DTV Elected Channel 47/ FCC Tentative Approval Received
48-50	WAFF (NTSC), Ch. 49, Huntsville, AL	3	WAFF DTV Elected Channel 49/ FCC Tentative Approval Received
51	WPGD (DTV), Ch. 51, Hendersonville, TN	171	WAFF DTV Elected Channel 51/ FCC Tentative Approval Received

¹ Distance from current WHNT site.

ATTACHMENT B

INTERFERENCE ACCEPTANCE AGREEMENT

MB Docket No. 03-15

THIS INTERFERENCE ACCEPTANCE AGREEMENT is made as of August ^{12th} __, 2005 between New York Times Management Services ("NYTMS") and Meredith Corporation ("Meredith Corp.").

NYTMS is the licensee of television broadcast station WHNT-TV, Channel 59 and WHNT-DT, Channel 19, Huntsville, AL ("WHNT"). Because its current DTV channel is in the "out-of-core" spectrum, NYTMS could not elect that channel for WHNT's operations after the conclusion of the digital television ("DTV") transition. Accordingly, on February 10, 2005, NYTMS made a first-round channel election filing with the Federal Communications Commission ("FCC") pursuant to which NYTMS elected Channel 19 for WHNT's operations after the conclusion of the DTV transition. NYTMS has determined that no other "in-core" channel is available in the Huntsville Designated Market Area ("DMA") that would allow WHNT to provide the same or similar level of DTV service as is currently provided by WHNT's operations on Channel 59.

Meredith Corp. is the licensee of television broadcast station WGCL-TV, Channel 46 and WGCL-DT, Channel 19, Atlanta, Georgia ("WGCL"). On January 21, 2005, Meredith Corp. made a first-round channel election filing with the FCC pursuant to which Meredith Corp. elected its DTV Channel 19 for WGCL's operations after the close of the DTV transition. On June 15, 2005, the FCC provided WGCL a tentative DTV channel designation on Channel 19 for such operation.

On June 7, 2005, the FCC sent a letter to NYTMS stating that WHNT's proposed post-DTV transition operation on Channel 19 would create 0.3 percent impermissible interference to the baseline service population of WGCL's "elected DTV [channel] 19." The letter further stated that NYTMS may resolve the conflict by, among other options, "negotiating a conflict resolution agreement with the station(s) with which [WHNT is] in conflict." Interference studies commissioned by NYTMS and presented to Meredith Corp. suggest that interference from WHNT's proposed Channel 19 operation would be located at the periphery of the WGCL service area.

In the post-transition environment, Meredith Corp. may wish to make certain changes to WGCL's operating parameters that could result in new interference by WGCL to 0.3 percent of WHNT's baseline service population.

Accordingly, subject to the FCC's approval of this agreement, the parties make the following agreements:

First, consistent with the FCC's Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, MB Docket No. 03-15 (rel. Sept. 7, 2004), and, for the purpose of facilitating grant of WHNT's channel election, Meredith Corp. hereby agrees that WGCL will accept the predicted interference by WHNT to 0.3

percent of the WGCL service area population, based upon the facilities certified to the FCC in WHNT's Form 381 filing (FCC File No. BCERCT-20041105AGF) and in WGCL's Form 381 filing (FCC File No. BCERCT-20041105AIQ).

Second, to facilitate WGCL in providing a robust DTV service after the conclusion of the DTV transition, NYTMS hereby agrees that WHNT will accept new interference from WGCL to 0.3 percent of WHNT's Channel 19 service area population following the conclusion of the DTV transition.

Third, NYTMS agrees that if the actual interference from WHNT's Channel 19 operations to WGCL's baseline service population (based upon the facilities certified to the FCC in WGCL's Form 381 filing, FCC File No. BCERCT-20041105AIQ) exceeds 0.3 percent, WHNT will take appropriate action to reduce such interference to 0.3 percent, unless WHNT is able to obtain WGCL's consent to the additional interference.

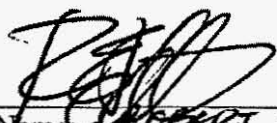
Fourth, each of NYTMS and Meredith Corp. shall take all commercially reasonable steps to satisfy any questions or concerns raised by the FCC with respect to their first-round DTV election filings, notify the other of any such FCC inquiries, and furnish all information requested by the FCC with respect thereto.

No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless in a writing signed by the party against whom enforcement is sought. Neither party may assign this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld. This Agreement constitutes the entire agreement and understanding of the parties hereto and supersedes all prior agreements and understandings with respect to the subject matter hereof. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their respective successors and permitted assigns. This Agreement shall be governed by the laws of the State of Alabama without giving effect to the choice of law provisions thereof. Each party shall bear all of its expenses incurred in connection with the transactions contemplated by this Agreement, including without limitation accounting and legal fees incurred in connection herewith. Except for the mutual consent set forth above, no consideration is being paid by either party in connection with this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Remainder of this page is intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

NEW YORK TIMES MANAGEMENT SERVICES

By: 
Name: ROBERT A. EDOFF
Title: PRESIDENT, BROADCAST MEDIA GROUP

MEREDITH CORPORATION


By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first set forth above.

NEW YORK TIMES MANAGEMENT SERVICES

By: _____
Name:
Title:

MEREDITH CORPORATION

By:  _____
Name:
Title: Vice President & Director of Engineering